

ORDINANCE NO. 98- 3

1 **AN ORDINANCE OF THE BOARD OF COUNTY**
2 **COMMISSIONERS OF PALM BEACH COUNTY,**
3 **FLORIDA, CREATING THE WETLANDS**
4 **PROTECTION SECTION OF THE PALM BEACH**
5 **COUNTY UNIFIED LAND DEVELOPMENT CODE**
6 **(ULDC), ARTICLE 9, SECTION 9.4, SUBSECTIONS A**
7 **THROUGH I; PROVIDING FOR REPEAL OF LAWS**
8 **IN CONFLICT; PROVIDING FOR SEVERABILITY;**
9 **PROVIDING FOR INCLUSION IN THE UNIFIED**
10 **LAND DEVELOPMENT CODE; AND PROVIDING**
11 **FOR AN EFFECTIVE DATE.**

12
13 **WHEREAS,** the Unified Land Development Code was adopted pursuant to
14 Chapter 163.3202 (Land Development Regulations) of the Florida Statutes to further
15 growth management requirements; and

16 **WHEREAS,** on June 16, 1992, the Palm Beach County Board of County
17 Commissioners, sitting as the Palm Beach County Environmental Control Board, adopted
18 the Wetlands Protection Section of the Palm Beach County Unified Land Development
19 Code; Article 9, Section 9.4; and

20 **WHEREAS,** on December 16, 1997, the Board of County Commissioners, sitting
21 as the Palm Beach County Environmental Control Board, voted to sunset the provisions of
22 Article 9, Section 9.4 as of March 1, 1998 to provide an opportunity to apply additional
23 resources to environmental enhancement and natural resources stewardship activities; and

24 **WHEREAS,** the Palm Beach County Comprehensive Plan, as amended, identifies a
25 Wetlands Protection Ordinance as an integral part of the County's wetland protection
26 efforts; and

27 **WHEREAS,** The Board of County Commissioners has determined that projects
28 affecting certain isolated wetlands that are not regulated by the State should receive an
29 environmental review by the County; and

30 **WHEREAS,** The Board of County Commissioners has determined that a Wetlands
31 Protection Ordinance is essential for furtherance of the public health, safety and welfare and
32 accomplishment of the policies of the Comprehensive Plan; and

33 **WHEREAS,** Chapter 125, Florida Statutes, authorizes the Board of County
34 Commissioners to adopt ordinances to exercise its powers not inconsistent with general or

1 special law.

2
3 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF THE**
4 **COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA, that:**

5
6 **SECTION 1. ADOPTION:** Pursuant to Chapter 125, Florida Statutes, the Board of
7 County Commissioners, hereby adopts the proposed Wetlands Protection Section of the
8 Unified Land Development Code, Article 9, Section 9.4, as set forth in Attachment 1a, as
9 attached hereto and made a part hereof.

10
11 **SECTION 2. REPEAL OF LAWS IN CONFLICT:** All local laws and ordinances
12 applying to the unincorporated area of Palm Beach County in conflict with any provision of
13 this ordinance are hereby repealed to the extent of any such conflict.

14
15 **SECTION 3. SEVERABILITY:** If any section, paragraph, sentence, clause, phrase, or
16 word of this ordinance is for any reason held by the Court to be unconstitutional,
17 inoperative or void, such holding shall not affect the remainder of this ordinance.

18
19 **SECTION 4. CAPTIONS:** The captions, section headings, and section designations used
20 in this ordinance are intended for the convenience of users only and shall have no effect in
21 the interpretation of the provisions of this ordinance.

22
23 **SECTION 5. INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE:** The
24 provisions of this ordinance shall become and be made a part of the Unified Land
25 Development Code of Palm Beach County, Florida. The Sections of the ordinance may be
26 renumbered or relettered to accomplish such, and the word "ordinance" may be changed to
27 "section", "article", or any other appropriate word.

28
29 **SECTION 6. EFFECTIVE DATE:** The provisions of this ordinance shall become
30 effective on March 1, 1998.

1
2 **APPROVED AND ADOPTED** by the Board of County Commissioners of Palm

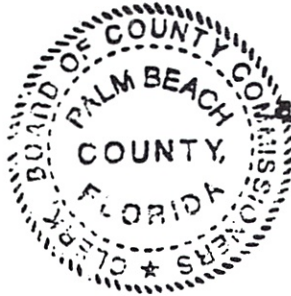
3 Beach County, on the 13th day of January, 19 98.


4
5 **PALM BEACH COUNTY, FLORIDA,**
6 **BY ITS BOARD OF COUNTY COMMISSIONERS**

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8
9
10 By 
11 Chairman

12
13 **APPROVED AS TO FORM AND**
14 **LEGAL SUFFICIENCY**

15
16 
17 COUNTY ATTORNEY



18 DOROTHY H. WILKEN, **CLEK**
19 Board of County Commissioners
20 
21 **DEPUTY CLERK**

22
23 Filed with the Department of State on the 20th day of January, 19 98.

24
25 Filed with the Clerk of the Board of County Commissioners of Palm Beach County, Florida
on the 13th day of January, 19 98.

SECTION 9.4 WETLANDS PROTECTION

A. PURPOSE AND INTENT

1. The Palm Beach County Board of County Commissioners (BCC) has determined that wetlands are a valuable natural resource worthy of protection. This determination is based on the functions wetlands serve and the values wetlands provide to the environment. The State and Federal governments provide substantial protection for wetland resources through their regulatory programs consisting of the Environmental Resource Permit (ERP) review process for the state, and the State Programmatic General Permit, as well as the individual dredge and fill permit process set forth in Chapter 404, C.F.R. for the United States Army Corps of Engineers (USACOE), which represents the federal government. It is the intent of Palm Beach County to review projects which may impact wetlands and provide pertinent comments to protect wetlands where appropriate, during the state and federal permitting process. Certain freshwater wetlands within Palm Beach County are not subject to the State ERP environmental review process. Therefore, the purpose of this Section is to maintain the functions and values provided by those freshwater wetlands, hereinafter referred to as wetlands, so that there will be no net loss of those functions and values due to development or other activities.
2. This Section shall set restrictions, constraints and requirements to protect and preserve wetlands. This Section shall apply to the dredging, filling or draining of wetlands, or any other manner of alteration which has the potential to impact wetlands located in unincorporated Palm Beach County. It shall be liberally construed to effect the purposes set forth herein.

B. AUTHORITY AND JURISDICTION

1. This Section is adopted under the authority of Chapter 125, Fla. Stat. and the Palm Beach County Comprehensive Plan, as amended.
2. All provisions of this Section shall be effective within the unincorporated areas of Palm Beach County, Florida.
3. Palm Beach County shall have regulatory authority over all wetlands, hereinafter referred to as jurisdictional wetlands, with the exception of wetlands, less than one-half (1/2) acre total area, entirely surrounded by uplands.
4. A Wetlands Alteration Permit shall not be required for those projects permitted for wetland impacts through the Environmental Resource Permit (ERP) process by the Florida Department of Environmental Protection (DEP) or the South Florida Water Management District (SFWMD), and which are described in Chapter 62-312.050 F.A.C.
5. Wetlands Alteration Permits shall be required in accordance with Subsection 9.4.D for any construction or alteration (where alteration means any dredging, filling, cutting of vegetation, drainage or flooding of or within a wetland) in, on or over jurisdictional wetlands. A permit may not be issued pursuant to this Subsection until it is determined that the general standards described in Subsection 9.4.D.2. will be met.

C. DEFINITIONS

Terms not defined in this Section shall be defined pursuant to Chapter 62, F.A.C., the document entitled "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District" (BOR) dated November 1996.

1 and Section 3.2 of the Palm Beach County Unified Land Development Code (ULDC).
2 as may be amended from time to time. In the event that a term is defined in Chapter
3 62, F.A.C., or the BOR and Section 3.2 of the ULDC, Chapter 62, F.A.C. or the
4 BOR shall prevail. In the event that a term is defined in Chapter 62, F.A.C. and the
5 BOR, the BOR shall prevail.
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7

8 **D. PERMIT APPLICATION REQUIREMENTS, PROCESS, AND GENERAL**
9 **STANDARDS OF ISSUANCE**

10
11 **1. Requirements and Process**

- 12
13 a. Permit applications shall be made on forms prescribed by ERM and
14 where appropriate, submitted concurrently with the Vegetation
15 Protection Permit that may be required pursuant to Article 9, Section 9.5
16 of the ULDC. Application information shall be consistent with the
17 requirements of this Subsection.
18
19 b. An application shall not be deemed complete until the application fee and
20 all information reasonably necessary to fully understand the extent,
21 nature and potential impacts of a proposed project are received by ERM.
22 Such information may include, but is not limited to:
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24 (1) A completed application form including an explanation of the
25 need and intent of the project and a description of construction or
26 alteration methodologies;
27
28 (2) Site plans including plan view and cross-sectional view sketches;
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30 (3) Methods of water quality control; and/or
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32 (4) Identification of the species and location of wetland vegetation in
33 the vicinity of, and likely to be affected by the project.
34
35 c. Upon receipt of an application and applicable application fee, ERM shall
36 follow the process established for issuance of Standard Permits as set
37 forth in the Vegetation Preservation and Protection Section of the Palm
38 Beach County Unified Land Development Code (ULDC), Article 9,
39 Section 9.5.F.
40
41 d. Any application containing false information, or any permit issued based
42 upon false information, may be denied or revoked, and may subject the
43 applicant to enforcement proceedings pursuant to Subsection 9.5.I.4. of
44 the ULDC.
45
46 e. ERM wetland alteration permits shall be issued with a duration period
47 that is reasonably necessary to complete the project and any necessary
48 mitigation, not to exceed five (5) years.
49
50 f. ERM may include conditions within any permit where such conditions
51 are deemed reasonably necessary to protect the environmental integrity
52 of the subject site, adjacent wetland areas or mitigation areas.
53
54 g. Any application received that is substantively the same as a previous
55 application that has been denied by ERM subsequent to the effective date
56 of this Section shall be denied without further processing.
57
58 h. Any site where a violation of any Section administered by ERM has
59 occurred, shall not be eligible for a permit under this Section until such
60 violation has been resolved.

- i. Any substantial modification to a complete application or to an issued permit, unless the modification is recommended by ERM, shall require an additional application fee pursuant to Subsection 9.4.H.

2. General Standards of Issuance

A Permit may not be issued pursuant to this Section until it is determined that the following general criteria will be met:

- a. There shall be no net loss of wetland functions and values:
- b. The water quality rules and standards as set forth in Chapter 62-302, F.A.C., shall be adhered to in all respects:
- c. The project shall neither adversely affect the conservation of fish or wildlife or their habitats, nor adversely affect recreational fisheries or their habitats:
- d. Endangered species, threatened species and species of special concern or their habitat shall not be adversely impacted:
- e. Project alternatives and modifications to avoid or lessen impacts have been incorporated into the project design:
- f. The project shall not be in contravention of any federal, state or local designated preserve or conservation or mitigation area.

E. MITIGATION

1. Criteria. For projects that do not meet the permitting criteria of Subsection 9.4.D.2, the applicant may submit a proposal for mitigation. Whether or not a mitigation proposal is appropriate or acceptable shall be determined by the criteria set forth in this Subsection.
2. When Mitigation is Appropriate.
- a. No Alternative Site. Restoration, creation, enhancement or preservation may be permitted to compensate for wetland loss only where a permit applicant demonstrates that the proposed activity cannot be practically located at an alternative upland site, where upland means all areas that are not wetlands.
- b. All Practical Measures to Reduce Impact. Restoration, creation, enhancement or preservation may be permitted to compensate for wetland loss only where the permit applicant has taken reasonable project modification measures to reduce wetland loss and degradation, such as site design to reduce fill into or drainage of the wetland, provision of an upland area (buffer) intended to protect wetlands from dredging, filling, or construction activities on adjacent lands, and other erosion control measures where the activity will cause erosion, construction of pretreatment facilities for stormwater to be discharged into wetlands, and undertaking activities at such time of year as would have the least impact upon the wetland or endangered or threatened species.
3. Standards for Mitigation. The mitigation standards set forth in Section 4.3 of the document entitled "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District" dated November 1996, as may be amended from time to time, shall be the standards

1 applicable to this Subsection 9.4.E., and are hereby adopted and incorporated
2 by reference as if set forth in full herein.

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5 **F. APPEALS**

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7 An applicant may appeal any decision made by ERM pursuant to this Section to the
8 Environmental Ordinance Appeals Board. A written notice of appeal shall be filed by
9 the applicant with the Director of ERM within twenty (20) days from receipt of the
10 decision appealed from, setting forth in detail the factual basis for such an appeal. The
11 matter shall be reviewed in hearing by the appeal board within sixty (60) days of
12 ERM's receipt of a request and a fifty (50) dollar filing fee. The appeal board shall
13 enter a decision by written order no later than ten (10) days following conclusion of the
14 hearing. The order shall include findings of fact and conclusions of law and shall be
15 deemed final administrative action. An applicant or ERM may appeal a final decision
16 of the appeal board within thirty (30) days of entry of the decision by filing a petition
17 for Writ for Certiorari in Circuit Court of the Fifteenth Judicial Circuit in and for Palm
18 Beach County, Florida.

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21 **G. FEES**

- 22
23 1. Permit application fees shall be non-refundable and non-transferable.
24
25 2. All application fees paid by check shall be made payable to the "Palm Beach
26 County Board of County Commissioners."
27
28 3. Fees are established by the Fee Schedule approved by the BCC.
29

30
31 **H. VIOLATIONS**

32 A violation of this Section shall be defined as follows:

- 33
34
35 1. The act of any individual to alter or cause or allow to be altered, any
36 jurisdictional wetland without an ERM permit, or in contravention of an ERM
37 permit.
38
39 2. Failure to comply with the requirements of this Section or any approval granted
40 or authorized hereunder, or an ERM Wetlands Alteration Permit issued prior to
41 the effective date of this Section.
42

43
44 **I. ENFORCEMENT**

- 45
46 1. Any individual found in violation of or in noncompliance with the provisions of
47 this Section, or the conditions of any ERM permit may be required to
48 implement appropriate corrective measures developed in consultation with ERM
49 to correct negative impacts to jurisdictional wetlands. Corrective measures shall
50 be implemented in addition to applicable penalties and fines.
51
52 2. In order to enforce compliance with the provisions of this Section, ERM may
53 issue a cease and desist order or require that a building permit or certificate of
54 occupancy be withheld. Violations of the provisions of this Section shall be
55 punishable by one or more of the following:
56
57 a. Triple applicable application fees for activities where a permit was not
58 obtained prior to violations, if the activities otherwise meet Palm Beach
59 County's permitting criteria; or
60

1 b. Enforcement procedures as outlined in Article 14 of the ULDC; or

2
3 c. Notwithstanding, all enforcement remedies available, pursuant to Article
4 14, do not prevent the County from enforcing the provisions of this
5 Section by any other measures allowable by law, including, but not
6 limited to, Chapters 125 and 162, Florida Statutes.

7
8 3. Erm Wetlands Alteration Permits issued prior to, and with obligations beyond,
9 the effective date of this Section, shall remain valid, and in full force and effect.
10 Accordingly, the enforcement provisions herein shall apply to any violation of
11 an ERM Wetlands Alteration Permit issued prior to, and with obligations
12 beyond, the effective date of this Section, except that violations of single-family
13 dock permits issued pursuant to the agreement between Palm Beach County and
14 the USACOE (adopted as Resolution R89-120 and dated January 24, 1989),
15 shall be referred to the USACOE, and ERM Mangrove Trimming Permit
16 violations shall be referred to the DEP. In the event the DEP directs ERM to
17 enforce a violation of a permit issued under the mangrove delegation agreement
18 between Palm Beach County and the DEP, dated January 21, 1997, the
19 enforcement provisions herein, in addition to any State-mandated enforcement
20 provisions, shall apply.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on 1/13/98
DATED at West Palm Beach, FL on 1/27/98
DOROTHY H. WILKEN, Clerk
By: Dorothy A. House D.C.

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2
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STATE OF FLORIDA, COUNTY OF PALM BEACH
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on 1/13/98
DATED at West Palm Beach, FL on 1/27/98
DOROTHY H. WILKEN, Clerk
By: Dorothy A. House D.C.